

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42161

AMEROPAN OIL CORPORATION

v.

CANADIAN NATIONAL RAILWAY COMPANY

Decided: February 1, 2019

On December 17, 2018, Ameropan Oil Corporation (Ameropan) filed a complaint against Canadian National Railway Company (CN). Among other things, Ameropan alleges that CN reduced rail service to Ameropan's facilities from five days per week to two days per week. (Compl. 3.) Ameropan argues that the alleged service reduction violates 49 U.S.C. § 11101(a) and (c), and 49 U.S.C. § 10702(2). (*Id.* at 5.) Ameropan asks the Board to order CN to restore service to five days per week and requests damages for the alleged statutory violations. (*Id.*)

On January 28, 2019, Illinois Central Railroad Company (IC)<sup>1</sup> and CN submitted three pleadings: (1) a motion to dismiss the complaint on jurisdictional grounds, citing 49 U.S.C. § 10709(c)(1) and asserting that IC provides service to Ameropan pursuant to a rail transportation contract; (2) a request to toll the period for filing an answer to the complaint, pending a decision on the motion to dismiss; and (3) a motion for protective order.

Due to the partial shutdown of the Federal government from December 22, 2018, through January 25, 2019, all deadlines requiring the submission of material to the Board, including the deadlines in this proceeding, were tolled. Filings Submitted or Due to Be Submitted During the Partial Fed. Gov't Shutdown, EP 751 (STB served Jan. 28, 2019). Thus, an answer to the complaint would otherwise be due by February 4, 2019. *Id.*

To allow the Board time to consider the issues, the deadline for filing an answer to the complaint will be tolled until further order of the Board.

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<sup>1</sup> IC and CN state that CN, which is IC's ultimate corporate parent, is a Canadian corporation that does not own or operate rail lines in Illinois and does not provide rail service to Ameropan in Chicago. (Mot. to Dismiss 1 n.1, 5.) IC and CN argue that, even if the Board does not dismiss the complaint in its entirety, the Board should dismiss CN as a party defendant. (*Id.* at 5.) IC and CN also state that they are not asking the Board to require Ameropan to amend its complaint to substitute IC as the defendant, due to their position that the complaint should be dismissed in its entirety. (*Id.* at 1 n.1.)

It is ordered:

1. The deadline for filing an answer to the complaint is tolled until further order of the Board.

2. This decision is effective on its service date.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.